

6. The averments in this paragraph are conclusions of law to which no response is required, but is denied nevertheless. To the extent there is a factual averment, it is denied.

7. The averments in this paragraph are conclusions of law to which no response is required, but is denied nevertheless.

8. The allegations in this paragraph are directed at another defendant.

9. The averments in this paragraph are conclusions of law to which no response is required, but is denied nevertheless.

10. The averments in this paragraph are conclusions of law to which no response is required, but is denied nevertheless.

11. The allegations in this paragraph are directed at another defendant.

FACTS

12. Answering Defendants are without sufficient knowledge or information to form a belief as to the truth of the matters asserted and therefore they are denied.

13. Answering Defendants are without sufficient knowledge or information to form a belief as to the truth of the matters asserted and therefore they are denied.

14. Answering Defendants are without sufficient knowledge or information to form a belief as to the truth of the matters asserted and therefore they are denied.

15. Denied.

16. Denied.

17. Answering Defendants are without sufficient knowledge or information to form a belief as to the truth of the matters asserted and therefore they are denied.

18. The averments in this paragraph are conclusions of law to which no response is required, but is denied nevertheless. To the extent there is a factual averment, it is denied.

19. Answering Defendants are without sufficient knowledge or information to form a belief as to the truth of the matters asserted and therefore they are denied.

20. Answering Defendants are without sufficient knowledge or information to form a belief as to the truth of the matters asserted and therefore they are denied.

21. Answering Defendants are without sufficient knowledge or information to form a belief as to the truth of the matters asserted and therefore they are denied.

22. Answering Defendants are without sufficient knowledge or information to form a belief as to the truth of the matters asserted and therefore they are denied.

23. Answering Defendants are without sufficient knowledge or information to form a belief as to the truth of the matters asserted and therefore they are denied.

24. Admitted as to Defendant Moody only. The remaining allegations in this paragraph are directed at another defendant.

25. Denied.

26. Denied.

27. Denied.

28. The allegations in this paragraph are directed at another defendant.

29. Admitted.

30. Denied.

31. Denied.

32. The averments in this paragraph are conclusions of law to which no response is required, but is denied nevertheless. To the extent there is a factual averment, it is denied.

33. The averments in this paragraph are conclusions of law to which no response is required, but is denied nevertheless. To the extent there is a factual averment, it is denied.

34. The averments in this paragraph are conclusions of law to which no response is required, but is denied nevertheless. To the extent there is a factual averment, it is denied.

35. Answering Defendants are without sufficient knowledge or information to form a belief as to the truth of the matters asserted and therefore they are denied.

36. Answering Defendants are without sufficient knowledge or information to form a belief as to the truth of the matters asserted and therefore they are denied.

37. Admitted in part, denied in part. It is admitted that Plaintiff was arraigned and charge as stated. The remaining allegations are denied.

38. Denied.

39. Denied.

40. Denied.

41. Denied.

42. Denied.

43. The averments in this paragraph are conclusions of law to which no response is required, but is denied nevertheless. To the extent there is a factual averment, it is denied.

44. Answering Defendants are without sufficient knowledge or information to form a belief as to the truth of the matters asserted and therefore they are denied.

45. Admitted.

46. Answering Defendants are without sufficient knowledge or information to form a belief as to the truth of the matters asserted and therefore they are denied.

47. Answering Defendants are without sufficient knowledge or information to form a belief as to the truth of the matters asserted and therefore they are denied.

48. Answering Defendants are without sufficient knowledge or information to form a belief as to the truth of the matters asserted and therefore they are denied.

49. The averments in this paragraph are conclusions of law to which no response is required, but is denied nevertheless. To the extent there is a factual averment, it is denied.

50. The averments in this paragraph are conclusions of law to which no response is required, but is denied nevertheless. To the extent there is a factual averment, it is denied.

51. The averments in this paragraph are conclusions of law to which no response is required, but is denied nevertheless. To the extent there is a factual averment, it is denied.

52. The averments in this paragraph are conclusions of law to which no response is required, but is denied nevertheless. To the extent there is a factual averment, it is denied.

54. The averments in this paragraph are conclusions of law to which no response is required, but is denied nevertheless. To the extent there is a factual averment, it is denied.

55. The averments in this paragraph are conclusions of law to which no response is required, but is denied nevertheless. To the extent there is a factual averment, it is denied.

56. Denied.

57. The averments in this paragraph are conclusions of law to which no response is required, but is denied nevertheless. To the extent there is a factual averment, it is denied.

WHEREFORE, Answering Defendants pray that this Honorable Court dismiss Plaintiff's Complaint with prejudice or that judgment be rendered wholly in favor of Answering Defendants.

COUNT I

**42 U.S.C. §§ 1983 against Defendant Trooper O'Brien, Defendant Trooper Nemshick,
Defendant Moody, John and Jane Doe Casino Defendants, and Defendant Cardoni**
Excessive Force

58. All the foregoing responses are incorporated by reference.

59. The averments in this paragraph are conclusions of law to which no response is required, but are, nevertheless, denied. To the extent there is a factual averment, it is denied.

WHEREFORE, Answering Defendants pray that this Honorable Court dismiss Plaintiff's Complaint with prejudice or that judgment be rendered wholly in favor of Answering Defendants.

COUNT II

Supplemental State Law Claim Against All Defendants
Battery

60. All the foregoing responses are incorporated by reference.

61. The averments in this paragraph are conclusions of law to which no response is required, but are, nevertheless, denied. To the extent there is a factual averment, it is denied.

WHEREFORE, Answering Defendants pray that this Honorable Court dismiss Plaintiff's Complaint with prejudice or that judgment be rendered wholly in favor of Answering Defendants.

COUNT III

**42 U.S.C. §§ 1983 against Defendant Trooper O'Brien, Defendant Trooper Nemshick,
Defendant Moody, John and Jane Doe Casino Defendants, and Defendant Cardoni**
Assault

62. All the foregoing responses are incorporated by reference.

63. The averments in this paragraph are conclusions of law to which no response is required, but are, nevertheless, denied. To the extent there is a factual averment, it is denied.

WHEREFORE, Answering Defendants pray that this Honorable Court dismiss Plaintiff's Complaint with prejudice or that judgment be rendered wholly in favor of Answering Defendants.

COUNT IV
Supplemental State Law Claim Against All Defendants
Assault

64. All the foregoing responses are incorporated by reference.

65. The averments in this paragraph are conclusions of law to which no response is required, but are, nevertheless, denied. To the extent there is a factual averment, it is denied.

WHEREFORE, Answering Defendants pray that this Honorable Court dismiss Plaintiff's Complaint with prejudice or that judgment be rendered wholly in favor of Answering Defendants.

COUNT V
42 U.S.C. §§ 1983 against Defendant Trooper O'Brien, Defendant Trooper Nemshick,
Defendant Moody, John and Jane Doe Casino Defendants, and Defendant Cardoni
Unlawful Arrest

66. All the foregoing responses are incorporated by reference.

67. The averments in this paragraph are conclusions of law to which no response is required, but are, nevertheless, denied. To the extent there is a factual averment, it is denied.

WHEREFORE, Answering Defendants pray that this Honorable Court dismiss Plaintiff's Complaint with prejudice or that judgment be rendered wholly in favor of Answering Defendants.

COUNT VI
Supplemental State Law Claim Against All Defendants
False Imprisonment

68. All the foregoing responses are incorporated by reference.

69. The averments in this paragraph are conclusions of law to which no response is required, but are, nevertheless, denied. To the extent there is a factual averment, it is denied.

WHEREFORE, Answering Defendants pray that this Honorable Court dismiss Plaintiff's Complaint with prejudice or that judgment be rendered wholly in favor of Answering Defendants.

COUNT VII

42 U.S.C. §§ 1983 against Defendant Trooper O'Brien, Defendant Trooper Nemshick, Defendant Moody, John and Jane Doe Casino Defendants, and Defendant Cardoni Conspiracy

70. All the foregoing responses are incorporated by reference.

71. The averments in this paragraph are conclusions of law to which no response is required, but are, nevertheless, denied. To the extent there is a factual averment, it is denied.

WHEREFORE, Answering Defendants pray that this Honorable Court dismiss Plaintiff's Complaint with prejudice or that judgment be rendered wholly in favor of Answering Defendants.

COUNT VIII

Supplemental State Law Claim Against All Defendants Conspiracy

72. All the foregoing responses are incorporated by reference.

73. The averments in this paragraph are conclusions of law to which no response is required, but are, nevertheless, denied. To the extent there is a factual averment, it is denied.

WHEREFORE, Answering Defendants pray that this Honorable Court dismiss Plaintiff's Complaint with prejudice or that judgment be rendered wholly in favor of Answering Defendants.

COUNT IX

Supplemental Claim of Intentional Infliction of Emotional Distress Against All Defendants

74. All the foregoing responses are incorporated by reference.

75. The averments in this paragraph are conclusions of law to which no response is required, but are, nevertheless, denied. To the extent there is a factual averment, it is denied.

WHEREFORE, Answering Defendants pray that this Honorable Court dismiss Plaintiff's Complaint with prejudice or that judgment be rendered wholly in favor of Answering Defendants.

COUNT X

Supplemental Claim of Negligent Infliction of Emotional Distress against All Defendants

76. All the foregoing responses are incorporated by reference.

77. The averments in this paragraph are conclusions of law to which no response is required, but are, nevertheless, denied. To the extent there is a factual averment, it is denied.

WHEREFORE, Answering Defendants pray that this Honorable Court dismiss Plaintiff's Complaint with prejudice or that judgment be rendered wholly in favor of Answering Defendants.

COUNT XI

42 U.S.C. §§ 1983 against Defendant Trooper O'Brien, Defendant Trooper Nemshick, Defendant Moody, John and Jane Doe Casino Defendants, and Defendant Cardoni
Malicious Prosecution

78. All the foregoing responses are incorporated by reference.

79. The averments in this paragraph are conclusions of law to which no response is required, but are, nevertheless, denied. To the extent there is a factual averment, it is denied.

80. The averments in this paragraph are conclusions of law to which no response is required, but are, nevertheless, denied. To the extent there is a factual averment, it is denied.

81. The averments in this paragraph are conclusions of law to which no response is required, but are, nevertheless, denied. To the extent there is a factual averment, it is denied.

WHEREFORE, Answering Defendants pray that this Honorable Court dismiss Plaintiff's Complaint with prejudice or that judgment be rendered wholly in favor of Answering Defendants.

COUNT XII

Supplemental State Law Claim against Defendant Trooper O'Brien, Defendant Trooper Nemshick, Defendant Moody, John and Jane Doe Casino Defendants, and Defendant Cardoni
Malicious Prosecution

82. All the foregoing responses are incorporated by reference.

83. The averments in this paragraph are conclusions of law to which no response is required, but are, nevertheless, denied. To the extent there is a factual averment, it is denied.

WHEREFORE, Answering Defendants pray that this Honorable Court dismiss Plaintiff's Complaint with prejudice or that judgment be rendered wholly in favor of Answering Defendants.

COUNT XIII

Supplemental Claim of Vicarious Liability Against Defendant, Mount Airy No. 1, LLC d/b/a Mount Airy Casino

84. All the foregoing responses are incorporated by reference.

85. The averments in this paragraph are conclusions of law to which no response is required, but are, nevertheless, denied. To the extent there is a factual averment, it is denied.

86. The averments in this paragraph are conclusions of law to which no response is required, but are, nevertheless, denied. To the extent there is a factual averment, it is denied.

87. The averments in this paragraph are conclusions of law to which no response is required, but are, nevertheless, denied. To the extent there is a factual averment, it is denied.

88. The averments in this paragraph are conclusions of law to which no response is required, but are, nevertheless, denied. To the extent there is a factual averment, it is denied.

89. The averments in this paragraph are conclusions of law to which no response is required, but are, nevertheless, denied. To the extent there is a factual averment, it is denied.

WHEREFORE, Defendants, Mount Airy No. 1, LLC d/b/a Mt. Airy Casino and Cory Moody, respectfully requests that this Honorable Court dismiss Plaintiff's Complaint with prejudice and award attorneys fees and costs against Plaintiff.

DAMAGES

90. All the foregoing responses are incorporated by reference.

91. This averment is a statement of damages and no response is required.

WHEREFORE, Answering Defendants pray that this Honorable Court dismiss Plaintiff's Complaint with prejudice or that judgment be rendered wholly in favor of Answering Defendants.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

The Plaintiff's Complaint fails to state causes of action upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

None of the Answering Defendant were state actors and no actions on their part were performed under the color of state law.

THIRD AFFIRMATIVE DEFENSE

At no time did Answering Defendants deprive or seek to deprive Plaintiff of any rights, privileges or immunities secured to him by the U.S. Constitution or the laws of the United States, the Pennsylvania Constitution or the laws of the Commonwealth.

FOURTH AFFIRMATIVE DEFENSE

Plaintiff's damages, as claimed, were not proximately caused in any manner whatsoever by Answering Defendants.

FIFTH AFFIRMATIVE DEFENSE

If Plaintiff sustained the injuries and damages as alleged in the Complaint, then same were not proximately caused by any action or failure to act on behalf of Answering Defendants.

SIXTH AFFIRMATIVE DEFENSE

At no time did Answering Defendants act in conspiracy towards Plaintiff.

SEVENTH AFFIRMATIVE DEFENSE

The conduct of Answering Defendants was not a substantial factor in causing the harm complained of by Plaintiff.

EIGHTH AFFIRMATIVE DEFENSE

Plaintiff failed to mitigate his damages.

NINTH AFFIRMATIVE DEFENSE

At no time material hereto did Answering Defendants act in bad faith, or in a willful, wanton, outrageous, reckless or malicious manner towards Plaintiff.

TENTH AFFIRMATIVE DEFENSE

If an incident occurred in the manner alleged by the Plaintiff, then such accident occurred as a result of the negligence, carelessness and/or recklessness of the Plaintiff himself, and under the terms of the Comparative Negligence Act of 1976, 42 Pa. C.S.A. 7102 et seq., the Plaintiff is not entitled to recover from Answering Defendants or the recovery is to be reduced in accordance with the terms of the aforesaid Act.

ELEVENTH AFFIRMATIVE DEFENSE

If it is judicially determined that the Plaintiff suffered any damages as a result of the accident as alleged in Plaintiff's Complaint, then such damages were proximately caused by the negligence, carelessness and/or recklessness of Plaintiff himself.

TWELFTH AFFIRMATIVE DEFENSE

Plaintiff's cause of action as alleged and any damages claimed by Plaintiff were caused in whole or in part, by individuals and/or entities over whom the Answering Defendants had no control, or right of control.

THIRTEENTH AFFIRMATIVE DEFENSE

Defendants affirmatively plead any other matter constituting an avoidance or affirmative defense as set forth in F.R.Civ.P. 8(c).

WHEREFORE, Answering Defendants pray that this Honorable Court dismiss Plaintiff's Complaint with prejudice or that judgment be rendered wholly in favor of Answering Defendants.

AFFIRMATIVE DEFENSES DIRECTED TO CO-DEFENDANTS

FIRST AFFIRMATIVE DEFENSE DIRECTED TO CO-DEFENDANTS

If Plaintiff suffered damages as alleged in the Amended Complaint, said damages were caused solely by the negligence, carelessness, and recklessness of Co-Defendants.

SECOND AFFIRMATIVE DEFENSE DIRECTED TO CO-DEFENDANTS

If Answering Defendants are held liable to Plaintiff for all of, or part of, such damages as alleged, Co-Defendants are liable to Answering Defendants by way of contribution or indemnity, contractually or otherwise.

WHEREFORE, Defendants, Mount Airy No. 1, LLC d/b/a Mt. Airy Casino and Cory Moody, respectfully requests that this Honorable Court dismiss Plaintiff's Complaint with prejudice or that judgment be rendered wholly in favor of Answering Defendants.

Respectfully Submitted,
HENDRZAK & LLOYD

/s/ Susan Smith Lloyd
SUSAN SMITH LLOYD, ESQUIRE
Attorney ID # 54484
Attorney for Defendants,
Mount Airy No. 1, LLC d/b/a Mt. Airy Casino and
Cory Moody
3701 Corporate Parkway, Suite 100
Center Valley, PA 18034
Tel: (610) 709-8568
Fax: (610) 709-8560
Email: susan.lloyd@zurichna.com

Dated: March 5, 2015

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

RYAN HEILIMANN

v.

STATE TROOPER THOMAS O'BRIEN;
STATE TROOPER PETER P. NEMSHICK;
CORY MOODY;
AGENT CHRISTOPHER CARDONI;
MOUNT AIRY NO. 1, LLC
d/b/a MT. AIRY CASINO; and
JOHN DOE CASINO DEFENDANTS #1-25;
And
JANE DOE CASINO DEFENDANTS #1-25

:
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: No. 3:14-cv-01271
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:
: Jury Trial Demanded
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CERTIFICATE OF SERVICE

I, SUSAN SMITH LLOYD, ESQUIRE, hereby certify that a true and correct copy of the
Answer to Plaintiff's Complaint with Affirmative Defenses of Defendants, Mount Airy No. 1,
LLC d/b/a Mt. Airy Casio and Cory Moody, was served via e-filing notification to:

Brian M. Collins, Esquire
Krasner & Long, LLC
The Tiger Building
1221 Locust Street
Philadelphia, PA 19107
Attorney for Plaintiff

Lisa Wojdak Basial, Esquire
Senior Deputy Attorney General
Office of Attorney General
15th Floor, Strawberry Square
Harrisburg, PA 17120
Attorney for Defs. State Troopers

Respectfully Submitted,
HENDRZAK & LLOYD

/s/ Susan Smith Lloyd
SUSAN SMITH LLOYD, ESQUIRE
Attorney ID # 54484
*Attorney for Defendants,
Mount Airy No. 1, LLC d/b/a Mt. Airy Casino and
Cory Moody*
3701 Corporate Parkway, Suite 100
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Tel: (610) 709-8568
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Email: susan.lloyd@zurichna.com

Dated: March 5, 2015